IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6404 of 1995
TO
FIRST APPEAL NO.6414 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and
Hon'ble MR.JUSTICE C.K.BUCH

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER
Versus
SANATKUMAR GOVINDBHAI PATEL

Appearance:
MR SJ DAVE, AGP for Appellants
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH
Date of decision: 27/02/98

ORAL COMMON JUDGEMENT (PER ;Y.B.BHATT, J)

We have heard the ld. counsel for the respective parties on the questions of fact and law which arise in the present group of appeals.

2. This group of appeals arise under Sec.54 of the Land Acq. Act read with Sec.96 of the C.P.Code, challenging the common judgment and awards passed by the Reference Court under Sec.18 of the said Act. The lands in question were acquired for the Luvara Branch Canal Project under relevant notification under Sec.4 of the said Act which was published on 12.12.1985. The lands are situated in the village Sutrel, Ta: Vaghra, Dist.: Bharuch. After taking into consideration all relevant facts and the evidence on record, Reference Court determined the market value of the land at the rate of Rs.450/ per Are. Ld. counsel for the appellant State sought to assail the determination of market value by discussing the relevant evidence, but ultimately, could not make much head-way.

We have, even otherwise, independently examined the evidence and we find that the determination of the market value on the part of the Reference Court appears to be just, reasonable and does not require interference in the present group of appeals.

3. There is yet another reason for confirming this figure of market value. Other lands were acquired for the same project in an adjoining village namely Pisad, which has a contiguous boundary with the village Sutrel in the instant case. The relevant notification in the other group of lands in village Pisad is dated 21.11.1985, the difference between the two notifications being hardly three weeks. So far as the acquisition in village Pisad is concerned, references had been filed under Sec.18 of the Act which were adjudicated upon by the Reference Court, leading to appeals under Sec. 54 of the said Act filed by the State. This group of appeals namely First Appeal No.1205/94 with FA Nos. 1255/94 to 1276/94 were decided by this Bench by the judgment and order dated 16.2.1998, and for the reasons recorded in the said judgment, valuation put by the Reference Court in respect of land of village Pisad at Rs. 450/ per Are was upheld. This especially is relevant in view of the fact that the award passed by the Reference Court under Sec.18 in respect of acquisition of land of village Pisad, is substantive evidence in the references in respect of the land in village Sutrel, with which we are concerned in the instant group of appeals. The said award is at exh.9 in the instant case. In substance, therefore, our earlier decision referred to herein above, confirms exh.9 in the instant case.

It, therefore, transpires that there is a difference of only three weeks between the notifications issued under Sec.4, that the boundaries of two villages in question are contiguous and the acquisition of the

land in both the groups is for the same purpose.

Thus, on the facts of the present case, we find that the valuation of the market value determined by the Reference Court at Rs. 450/ per are is required to be upheld. In this context, we may also note that the ld. counsel for the appellant is unable to point out any distinguishing features between two cases which would require us to take a different view.

4. We may also deal with another contention raised by the ld. counsel for the appellant which is a contention raised in the appeal for the first time, and will therefore required to be dealt with accordingly.

The ld. counsel for the appellant urged that the claimants had claimed Rs. 15000/ per Acre in the reference under Sec.18 wherein the Reference Court had awarded Rs. 450/ per Are, which in excess of the claim. At first sight, this would appear to be attractive submission, which however, does not stand the test when factually examined. We had called for the record and proceedings and we have examined the same with the assistance of the ld. counsel for the respective parties. In this context, we have examined original reference applications made under the signature of the claimants individually, which were filed by the respective claimants before the Land Acq. Officer, which then came to be forwarded by the Land Acq. Officer to the Reference Court. All these applications for making a reference when examined in original, disclose a claim of Rs. 20,000/ per Acre and not Rs. 15,000/ per Acre as contended by the counsel for the State. Thus, it becomes obvious that this contention is based on a misconception of fact. We have also discovered how this mistaken submission came to be made. It appears that the Land Acq.Officer had bunched together the applications for reference made by the separate claimants, and had forwarded the same to the Reference Court under a common forwarding letter together with a document which bears heading " Schedule : VI". It is in this Schedule : VI that the claim made by the claimants in their reference applications has been referred to as Rs. 15,000/ per Acre. Obviously, therefore, it is a mistake on the part of the Land Acq.Officer in preparing his summary for the purpose of transmitting the said reference applications to the Reference Court.Such an error on the part of the Land Acq. Officer cannot possibly adversely affect the claim actually made by the claimants in their reference applications.

Once it is accepted that the claim made in the reference applications under Sec.18 is Rs. 20,000/ per

Acre, the same works out to Rs. 454-66 ps. per Are (1 Acre = 4840 sq.yds. = 4404 sq.mts. = 44.04 Ares). When seen in this context, the award of the Reference Court under Sec.18 at Rs. 450/ per Are in fact does not exceed the claim made before the Reference Court.

5. Another contention sought to be raised before us for the first time in the present appeal was that the amount awarded by the Reference Court under Sec.18 exceeded the claimant's claim made under Sec.9 of the said act of Rs. 15,000/ per Acre.

The first question which arises in the context of this submission is to establish the foundation of facts on which the submission is made. Accordingly, we put it to the ld. Counsel for the appellant as to how and on the basis of what evidence would he be able to assert that the claim made under Sec.9 was at the rate of Rs.15,000/ per Acre. After having examined the record and proceedings carefully, neither the respective counsel nor ourselves were able to find out the original claim filed before the Land Acq.Officer under Sec.9 of the said Act. In fact, we did not expect to do so inasmuch as the original record of the Land Acq.Officer would not ipso facto become the record before the Reference Court under Sec.18 proceedings, unless the same were produced before the Reference Court and proved according to the rules of evidence. This normally is not done and is not the normal practice. Ld. counsel for the appellant was only able to point out to factual averments made in the award of the Land Acq.Officer under Sec.11 of the said Act. However, even the said award has not been brought on record of Sec.18 proceedings in accordance with the rules of evidence. We have examined this aspect with care and we find that same has not been exhibited, although it is physically located together with the record and proceedings of the record of the reference under Sec.18 of the said Act. However, its mere existence on the record of the reference proceedings, without the contents having been proved by the rules of evidence, would not permit us to assume that the contents thereof have also been proved. We are, therefore, not inclined to act on assumption that the claim of the claimant made under Sec.9 of the said Act was in fact Rs. 15000/ per Acre. Moreover, as observed by us herein above, since the question has been raised for the first time before us and had not been raised before the Reference Court, the claimants had no opportunity of leading evidence to establish the true facts and as also to meet with factual contentions in this regard.

6. In the context of the above-stated facts, ld.

Counsel for the appellant sought to rely upon the decision of the Supreme Court in the case of Ujjain Vikas Pradhikaran (reported at AIR 1996 SC Page 2777). In this short judgment, the relevant observations as also ratio laid down therein find place in paras 6 & 7 thereof.

Para-6 brings to the forefront the fact situation which the Supreme Court was dealing with in the case before it. On a plain reading of said para, we find that the Supreme Court did not approve and factually reversed the amount awarded by the High Court in the appeal before it, since it was factually found that the amount awarded by the High Court was in excess of the claim made in the memo of appeal. To our mind, this is a factual finding which cannot be lost sight of while interpreting the principle laid down in para-7 of the judgment.

The said decision then discusses in para-7, the scope and effect of Sec.25 of the said Act prior to and subsequent to the Amendment of 1984. In this context, the Supreme Court observed that since sub-sec.2 of Sec.25 was deleted by the said Amendment, limitation on the exercise of powers of the court was taken away. In this context, the Supreme Court raised a question as to whether the Court would grant higher compensation than what was assessed by the party? It is this question which the Supreme Court answered in the negative, broadly on the principle that it is open to a claimant to claim compensation at a particular rate since he assessed the market value of the land at that particular rate and fix compensation on that basis. This principle was applied by the Supreme Court to the facts of the case specifically being construed by the Supreme Court. On the factual aspect, the Supreme Court stated that since the compensation has been quantified by the appellants in the memo of appeals filed in the High Court, the High Court was not justified in awarding compensation in excess of the quantified claim. Thus, if this principle and/or ratio is applied to the facts of the present case, we would find that the word "Court" cannot mean any administrative or executive forum, and the same would have reference only to the Reference Court. Thus, when the said ratio is applied to the facts of the present case, the only implication which would flow from this is that the Reference Court cannot exceed the compensation claimed by the claimants in the reference under Sec.18.

It would be noted here that the ld. Counsel for the respondent claimants raised a contention that under the amended Sec.25, restrictions which applied to the powers of the Court prior to the amendment, have been removed and that, therefore, it is open to the Reference

Court to award compensation in a reference under Sec.18 which may exceed the claim made before itself. However, as discussed herein above, on the facts of the present case, this contention is academic and it is not necessary to decide the same. This is so because we have found that factually the claim before the Reference Court was Rs. 20,000/ per Acre and the compensation awarded by the Reference Court does not exceed the said rate.

7. No other contention is raised.

8. In the premises aforesaid, these appeals are dismissed with no orders as to cost.

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